



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2004

Mr. Kevin D. Pagan
Deputy City Attorney
City of Mcallen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-4304

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202395.

The City of McAllen (the "city") received a request for six categories of information, including copies of all disciplinary documentation relating to a named city employee. You state that you are releasing some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information contains information that may be confidential pursuant to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who timely requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is excepted from disclosure under section 552.117(a)(1) must be determined at the time the governmental body receives the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the city's receipt of this request for information. The city may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a

timely election under section 552.024 to keep the information confidential. You have submitted the form on which the individual whose information is at issue timely elected to keep his home address and telephone number confidential. However, the election form that you have submitted does not contain an election to keep the individual's social security number confidential. You may withhold the individual's social security number under section 552.117(a)(1) only if the individual timely elected under section 552.024 to keep the information confidential. Therefore, you must withhold the individual's home address and telephone number under, which you have marked, section 552.117(a)(1). You must withhold the individual's social security number, which you have marked, under section 552.117(a)(1) if the individual made a timely section 552.024 election to withhold such information.

We note that if a social security number is not excepted under section 552.117, it may be withheld in some circumstances under section 552.101 of the Government Code.¹ A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the document is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.101 also encompasses the common-law doctrine of privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 at 685 (Tex. 1976). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989). We have marked personal financial information that is protected by the common-law right of privacy and must be withheld under section 552.101 of the Government Code.

¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

In summary, you must withhold the home address and telephone number of the individual whose information is at issue under section 552.117(a)(1) of the Government Code. If the individual also made a timely election under section 552.024 of the Government Code regarding his social security number, it must be withheld under section 552.117(a)(1) of the Government Code. Even if the social security number may not be withheld under section 552.117, it may still be confidential under federal law. You must withhold the personal financial information we have marked under section 552.101 of the Government Code and common-law privacy. You must release the remaining requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

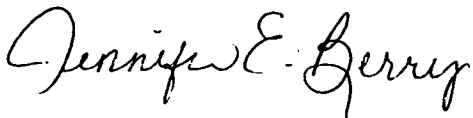
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer E. Berry". The signature is written in a cursive, flowing style.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 202395

Enc: Submitted documents

c: Dr. Anthony Rogers
Citizens for a Better and Safer (CBS)-McAllen
8506 Chivalry
San Antonio, Texas 78254
(w/o enclosures)